

April 2007

BANKRUPTCY REFORM

Value of Credit Counseling Requirement Is Not Clear





Highlights of [GAO-07-203](#), a report to congressional requesters

Why GAO Did This Study

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requires individuals to receive credit counseling before filing for bankruptcy and to take a debtor education course before having debts discharged. Concerns were raised that the new requirements could expose consumers to abusive practices by credit counseling agencies or become barriers to filing for bankruptcy. GAO was asked to examine (1) the process of approving counseling and education providers, (2) the content and results of the counseling and education sessions, (3) the fees charged, and (4) the availability of and challenges to accessing services.

To address these issues, GAO reviewed Trustee Program data and application case files, and interviewed a wide range of individuals and groups involved in the bankruptcy process.

What GAO Recommends

The Department of Justice's U.S. Trustee Program, which is responsible for the new requirements, should (1) develop the capability to track and analyze the outcomes of pre-filing credit counseling, and (2) issue formal guidance on what constitutes a client's "ability to pay." The Trustee Program agreed with GAO's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-203.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Yvonne D. Jones at (202) 512-8678 or JonesY@gao.gov.

BANKRUPTCY REFORM

Value of Credit Counseling Requirement Is Not Clear

What GAO Found

The Trustee Program's process for approving credit counseling and debtor education providers was designed to help ensure that providers met statutory and program requirements and demonstrated evidence of proficiency, experience, and reputability. The Bankruptcy Act set certain standards for providers, and the program's July 2006 rule clarified these standards and formalized the application review process. As of October 2006, the Trustee Program had approved 153 credit counseling and 268 debtor education providers. These providers have had few formal complaints lodged against them, and federal and state law enforcement authorities with whom we spoke did not identify any recent enforcement actions against them under consumer protection laws. No provider approved by the Trustee Program had had its federal tax-exempt status revoked, although four providers' tax-exempt status was being examined by the Internal Revenue Service.

The content of the required credit counseling and debtor education sessions generally complied with statutory and program requirements. Participants in the bankruptcy process largely believed the education requirement—a general financial literacy course—to be beneficial. However, the value of the counseling requirement is not clear. The counseling was intended to help consumers make informed choices about bankruptcy and its alternatives. Yet anecdotal evidence suggests that by the time most clients receive the counseling, their financial situations are dire, leaving them with no viable alternative to bankruptcy. As a result, the requirement may often serve more as an administrative obstacle than as a timely presentation of meaningful options. Because no mechanism currently exists to track the outcomes of the counseling, policymakers and program managers are unable to fully assess how well the requirement is serving its intended purpose.

Providers typically charge about \$50 per session and evidence suggests fees are being waived as appropriate for clients unable to pay, as the Bankruptcy Act requires. Neither the statute nor Trustee Program guidance defines what constitutes "ability to pay," and policies vary among providers. Formal guidance on this issue would have several benefits, including ensuring compliance with a minimum benchmark for waiving fees.

The number of counseling and education providers that have been approved appears sufficient to allow consumers to access these services in a timely manner. In-person sessions are available in most parts of the country, although the great majority of clients fulfill the requirements via telephone or Internet. The Trustee Program has efforts under way to help mitigate the challenges speakers of foreign languages can face in accessing services. Further, the bankruptcy courts have taken steps recently to help better ensure that filers are aware of the potential consequences of filing for bankruptcy without the required counseling certificate.

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Abbreviations

FTC	Federal Trade Commission
IRS	Internal Revenue Service

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United States Government Accountability Office
Washington, DC 20548

April 6, 2007

Congressional Requesters

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act) amended the federal bankruptcy code to require (1) individuals to receive budget and credit counseling from an approved provider before filing a petition in bankruptcy and (2) bankruptcy petitioners to complete an instructional course on personal financial management in order to have their debts discharged.¹ According to the legislative history of the act, one of the goals of the prefiling counseling requirement, which became effective on October 17, 2005, is to ensure that consumers understand the options available to them and the consequences of filing for bankruptcy. However, the requirement raised a number of concerns. In recent years, congressional committees and federal agencies have investigated some credit counseling agencies for alleged unfair and deceptive practices and were concerned that these practices, which included steering clients into repayment plans that benefited creditors and counseling agencies but not necessarily debtors, would affect those filing for bankruptcy protection. In addition, some members of Congress and other parties have been concerned that the cost and availability of counseling and education services could serve as barriers to those seeking to file for bankruptcy. In response to these concerns, Congress included in the Bankruptcy Act requirements for providers of both credit counseling and debtor education courses. The providers must meet certain criteria and obtain approval from the Department of Justice's U.S. Trustee Program (the Trustee Program), which oversees the bankruptcy process for most federal judicial districts and acts to ensure compliance with applicable laws and procedures.²

¹ Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, § 106, Pub. L. No. 109-8, 119 Stat. 23, 37-42 (2005) (amending various sections of Title 11). For the purposes of this report, hereafter we refer to the prefiling budget and counseling requirement as the credit counseling requirement and the predischarge personal financial management course as the debtor education requirement.

² In this report we use the term provider to refer to a provider of prefiling credit counseling or predischarge debtor education that has been approved by the Trustee Program. References to the Trustee Program in this report refer collectively to the United States Trustees and the Executive Office for United States Trustees.

In light of these issues, the objectives of this report are to examine (1) the actions taken by the Trustee Program to approve credit counseling and debtor education providers; (2) the content and results of the counseling and education sessions; (3) the fees providers charge for counseling and education services, and the extent to which these services are provided regardless of clients' ability to pay; and (4) the availability of approved counseling and education services and the challenges consumers may face in receiving these services.

To meet these objectives, we reviewed relevant provisions of the federal bankruptcy code as amended by the Bankruptcy Act and reviewed the Trustee Program's written policies, rules, guidance, and procedures for approving credit counseling and debtor education providers. We also collected and analyzed data provided to us by the Trustee Program, including data on the number, location, and characteristics of providers. To determine whether the Internal Revenue Service (IRS) had revoked the section 501(c)(3) tax-exempt status under the Internal Revenue Code, or taken other enforcement actions, against providers, we met with IRS officials and reviewed the agency's publicly available information. We also reviewed a nonprobability sample of the Trustee Program's application case files for 43 providers that represented the majority of counseling and education sessions conducted nationwide. We did not do a probability sample because of the limited size of the sample we could review and because we wanted to ensure that the small sample included all of the largest providers and specific numbers of other types of providers. The case files we reviewed included, among other things, the providers' initial applications, protocols, curricula and other guidance used by counselors and instructors, written materials and disclosures provided to consumers, fee schedules, and correspondence between the providers and the Trustee Program. To facilitate the case file review, we developed a data collection instrument to record specific information for each case file reviewed. We also reviewed relevant portions of the Federal Rules of Bankruptcy Procedure and the standardized forms required by the courts to file a bankruptcy petition. Further, we reviewed Web sites of selected bankruptcy courts. We also collected information related to the prefiling requirement from seven judicial districts and analyzed a survey of bankruptcy judges that was conducted by the Federal Judicial Center. Finally, we interviewed representatives of the Trustee Program; Federal Trade Commission (FTC); IRS; Administrative Office of the United States Courts; National Association of Attorneys General; American Bankruptcy Institute; National Association of Consumer Bankruptcy Attorneys; National Association of Bankruptcy Trustees; National Association of Chapter 13 Trustees; trade organizations representing creditors, such as

the American Bankers Association and the Financial Services Roundtable; consumer organizations, such as the Consumer Federation of America and the National Consumer Law Center; academic researchers; and 10 providers of credit counseling or debtor education that had been approved by the Trustee Program.

We conducted our review from February 2006 through March 2007 in Washington, D.C., and Boston, Ma., in accordance with generally accepted government auditing standards. A more extensive discussion of our scope and methodology appears in appendix I.

Results in Brief

The Trustee Program's process for approving credit counseling and debtor education providers was designed to ensure that applicants met statutory and program requirements and demonstrated evidence of proficiency, experience, and reputability. The Bankruptcy Act requires that providers meet certain minimum requirements designed to help ensure that providers are adequately qualified and to prevent conflicts of interest and abusive practices. To implement these requirements, the Trustee Program adopted application forms and an interim final rule that set forth application procedures and criteria that credit counseling and debtor education providers must meet. Relatively few concerns have been raised about the competence of the providers approved thus far. Federal and state law enforcement officials with whom we spoke did not identify enforcement actions related to consumer protection issues against any providers subsequent to their approval. As of March 2007, no provider approved by the Trustee Program had had its federal tax-exempt status revoked, but four providers' tax-exempt status was being examined by IRS. A Trustee Program official said that the program had approved these four applicants because, after careful review, the program was satisfied that they met the statutory and program requirements for quality and character.

Our review of selected providers' application files, curricula, and supporting materials showed that the content of the credit counseling and debtor education sessions generally complied with statutory and Trustee Program requirements. According to the Bankruptcy Act, prefilng credit counseling sessions should provide an analysis of the client's current financial condition and the factors that led to it, an individualized budget analysis, and assistance in developing an appropriate action plan. According to providers and Trustee Program data, the great majority of debtors fulfill the credit counseling requirement by telephone or via the Internet. We did not find evidence that agencies that provided prefilng

credit counseling discouraged clients from filing for bankruptcy and very few clients appeared to be entering into repayment plans administered by these agencies. However, it is not clear whether the prefiling requirement is serving its intended purpose—as described in the Bankruptcy Act’s accompanying conference report—of helping consumers make an informed choice about bankruptcy and its alternatives. Anecdotal evidence suggests that by the time most consumers receive the prefiling counseling, their financial situations are dire, leaving them with no viable alternative to bankruptcy. As we have reported in the past, data on program outcomes are essential for appropriate oversight and decision making. However, the Trustee Program does not track and monitor the outcomes of counseling sessions, including how often they are followed by a bankruptcy filing, in large part because this is not required under the program’s statutory responsibilities. Better data on the outcomes of counseling sessions could help program managers and policymakers determine how well the prefiling requirement is serving its intended purpose. Finally, we found that participants in the bankruptcy process and other experts believed that the debtor education course was generally a useful tool to improve debtors’ financial literacy.

Although comprehensive data were not available, evidence from our review suggests that counseling and education sessions typically cost about \$50 or less, and industry observers and consumer advocates we spoke with generally considered this amount to be reasonable. Providers’ policies for waiving fees varied and Trustee Program data on the three largest providers showed significant variations in the proportion of clients whose fees were waived—from 4 percent to 26 percent for credit counseling sessions and from 6 percent to 34 percent for debtor education courses. The Bankruptcy Act requires that providers charge reasonable fees and offer their services without regard to an individual’s ability to pay, but does not specify what constitutes a “reasonable” fee or “ability to pay.” The Trustee Program did not promulgate rules or provide specific guidance about what constitutes a debtor’s ability to pay in order to give providers the flexibility to respond to market conditions. However, formalized guidance would help reduce uncertainty among providers about when to waive fees and would provide a minimum benchmark for reducing or waiving fees.

Despite initial concerns, enough counseling and education providers have been approved to allow consumers to access these services relatively easily and in a timely manner. As of October 2006, the Trustee Program had approved 153 credit counseling and 268 debtor education providers. Three large nationwide organizations represent about half of the market

for both of these services. In-person counseling and education are not readily available in certain parts of the country, but even where these services are available, the great majority of debtors seek to fulfill the requirements by telephone or via the Internet. Anecdotal evidence suggests that certain populations, such as those whose primary language is not English, may face challenges accessing counseling and education services. The Trustee Program is undertaking steps to make it easier to identify providers that offer translation services and services in specific foreign languages. Some individuals, particularly those not represented by an attorney, file bankruptcy petitions without having met the prefiling credit counseling requirement. Since the Bankruptcy Act became effective, the bankruptcy courts have taken measures—on their Web sites and filing forms—to make the prefiling requirement more conspicuous to filers. Debtors who fail to fulfill the prefiling counseling requirement can face a variety of consequences, such as a delay in receiving the automatic stay that prevents creditors from continuing to seek payment.

This report makes two recommendations. First, in order to help policymakers assess the value of the Bankruptcy Act’s counseling requirement, we recommend that the Trustee Program develop a mechanism that would allow the program or other parties to track the outcomes of prefiling credit counseling, including the number of individuals issued counseling certificates who then file for bankruptcy. Second, to clarify the Bankruptcy Act’s requirement that the required counseling and education be provided regardless of a client’s ability to pay, we recommend that the Trustee Program issue formal guidance on what constitutes “ability to pay.”

We provided a draft of this report to the Administrative Office of the U.S. Courts, Department of Justice, and IRS, which provided technical comments that we incorporated as appropriate. In addition, the Department of Justice provided written comments, in which it concurred with our recommendations and discussed its plans for carrying them out.

Background

Bankruptcy is a court procedure designed to help consumers and businesses eliminate debts they cannot pay or repay them with the court’s protection.³ The filing of a bankruptcy petition in most cases operates as

³ Because businesses are not subject to the credit counseling or debtor education provisions of the Bankruptcy Act, the scope of this report is limited to personal bankruptcies.

an “automatic stay” that essentially prohibits most creditors from taking any action to attempt to collect a debt pending the resolution of the bankruptcy proceeding. Consumers usually file for bankruptcy under one of two chapters of the Bankruptcy Code. Under Chapter 7, the debtor’s eligible assets are liquidated (reduced to cash) and distributed to creditors in accordance with the procedures mandated by the court. At the end of the process, the debtor’s eligible debts are discharged, which means that creditors may take no further action against the individual to collect the debt. Under Chapter 13, debtors file a repayment plan with the court agreeing to pay their debts over time, usually 3 to 5 years. In these cases, the debtor’s discharge occurs upon completion of all payments under the plan. Personal bankruptcy is designed to give debtors a “fresh start” but is often considered a last resort, in large part because of the adverse effect it has on an individual’s credit record. Most debtors who file for bankruptcy use an attorney, but some debtors represent themselves without the aid of an attorney and are referred to as pro se debtors.

Federal courts have jurisdiction over bankruptcy cases and petitions can be filed in any one of the nation’s 94 judicial districts.⁴ The Trustee Program, a component of the Department of Justice, is responsible for overseeing the administration of most bankruptcy cases. The program consists of the Executive Office for U.S. Trustees, which provides general policy and legal guidance, oversees operations, and handles administrative functions, as well as 95 field offices and 21 United States Trustees—federal officials charged, among other things, with supervising the administration of federal bankruptcy cases. The Trustee Program also oversees private “panel trustees” and “standing trustees” who administer, respectively, individual Chapter 7 and Chapter 13 bankruptcy cases. Bankruptcy cases in Alabama and North Carolina are not under the jurisdiction of the Trustee Program and are administered instead by bankruptcy administrators in the judicial districts in those states. (See app. II for more information on Alabama and North Carolina.)

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed into law on April 20, 2005, and most of its provisions became effective on October 17, 2005. The act made substantial changes to the

⁴ There are 90 bankruptcy courts among the 94 judicial districts. The Eastern and Western Arkansas judicial districts are served by a single bankruptcy court and bankruptcy cases in the Guam, Virgin Islands, and Northern Marianas judicial districts are filed in district court.

Bankruptcy Code, including the addition of new credit counseling and debtor education requirements.⁵

- *Credit Counseling.* To be a “debtor” (that is, eligible to file for bankruptcy), an individual, except in limited circumstances, must receive from an approved provider, within 180 days preceding the date of filing a bankruptcy petition, (1) a briefing outlining the opportunities available for credit counseling and (2) assistance with performing a budget analysis. Individuals may satisfy the counseling requirement post-petition if the individual certifies the existence of exigent circumstances that merit a waiver.⁶
- *Debtor Education.* Prior to discharge of debts, Chapter 7 or Chapter 13 debtors must complete a personal financial management instructional course from an approved provider.

The Bankruptcy Act has designated the Trustee Program as responsible for the implementation of these requirements, including the development of rules and guidance and the certification of approved credit counseling and debtor education entities. Upon completing pre-filing counseling or pre-discharge education, consumers get a certificate from the provider that is submitted to the bankruptcy court as evidence of having fulfilled the requirement.

The credit counseling industry has existed for about 40 years. Credit counseling agencies generally work on behalf of their consumer clients, who are typically deeply in debt, to help them manage their existing financial problems and to teach them better financial management skills for the future. These agencies have historically been community-based nonprofit organizations that charge nothing or solicit modest fees from

⁵ Neither the pre-filing counseling requirement nor the pre-discharge debtor education course requirement are applicable with respect to a debtor who (i) resides in a district that a U.S. Trustee has determined does not have adequate capacity to service individuals requesting counseling or (ii) is incapacitated, disabled, or on active military duty in a military combat zone. 11 U.S.C. §§ 109(h)(2), 109(h)(4), 727(a)(11) and 1328(g)(2).

⁶ A debtor may be granted a temporary waiver to complete the counseling requirement after the filing of the petition if the debtor satisfies the court that (1) an exigent circumstance merits it, and (2) the debtor requested services from an approved provider but was unable to obtain them within 5 days. If the exemption is granted, the debtor has up to 30 days after filing the petition to complete the counseling requirement. However the court may, for cause, extend the 30-day grace period by up to an additional 15 days. 11 U.S.C. § 109(h)(3).

clients to help defray expenses. In some cases, agencies may offer to put clients in repayment programs, commonly termed debt management plans, where consumers pay off their unsecured debts by making a single, consolidated payment that the agency uses to disburse funds to creditors. Under such plans, creditors often agree to reduce the debtor's interest rates or waive certain fees and to contribute a small percentage of the amount received to the counseling agency to help fund its expenses.

The FTC and others have noted that many credit counseling agencies operate honestly and fairly and that these agencies are professional operations that provide valuable services to financially distressed consumers. However, starting in the 1990s, consumer complaints about selected segments of the credit counseling industry spurred congressional hearings and federal and state investigations into the activities of many credit counseling agencies.⁷ For example, over the past few years, the FTC has settled enforcement actions against several of these agencies for alleged abusive practices, including steering consumers into debt management plans that provided financial benefits to the agency but not to the consumer.⁸ Further, as part of its Credit Counseling Compliance Project, IRS has undertaken a broad examination effort of credit counseling organizations for compliance with the Internal Revenue Code,

⁷ See, for example, U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations. *Profiteering in a Non-profit Industry: Abusive Practices in Credit Counseling* (Washington, D.C.: Mar. 24, 2004).

⁸ FTC v. AmeriDebt, Inc. et al., Civil Action No.: PJM 03-3317 (D. Md. 2006) available at <http://www.ftc.gov/os/caselist/0223171/0223171ameridebt.htm>; FTC v. Better Budget Financial Services, Inc. et al., Civ. No. 04-12326 (WGY) (D. Mass 2005) available at <http://www.ftc.gov/os/caselist/0412326/0412326.htm>; FTC v. Debt Management Foundation Services, Inc., et al., Case No.: 8:04-CIV-1674-T-17-MSS (M.D. FL. 2005) available at <http://www.ftc.gov/os/caselist/0423029/0423029.htm>; FTC v. National Consumer Council, Inc et al., Civ. No. SACV04-0474CJC (JWJX) (C.D. Ca. 2005) available at <http://www.ftc.gov/os/caselist/0323185/0323185.htm>.

including the propriety of the organizations' tax-exempt status.^{9, 10} Between January 2005 and March 2007, IRS had revoked or terminated the federal tax-exempt status of 19 credit counseling agencies, and as of March 2007, IRS had proposed revocations for an additional 28 agencies.¹¹

The Trustee Program's Process for Screening Providers Is Designed to Help Ensure Statutory and Program Requirements Are Met

The Bankruptcy Act requires pre-filing credit counseling and debtor education providers to meet certain requirements designed to ensure the quality of their services and prevent abusive practices. The Trustee Program adopted application forms and an interim final rule on procedures for approving applicants. Few complaints have been raised about providers' competence or integrity, although IRS is in the process of examining the tax-exempt status of four providers.

Agencies Must Meet Statutory and Trustee Program Requirements to Be Approved

The Bankruptcy Act provided that credit counseling and debtor education agencies meet certain minimum requirements designed to ensure that providers are adequately qualified and to prevent abusive practices. With regard to credit counseling, the Trustee Program may approve only entities that, among other things

⁹ Treasury Inspector General for Tax Administration, *Abuses in the Tax-Exempt Credit Counseling Industry Are Being Addressed, but Further Actions Are Needed to Ensure Overall Industry Compliance*, Reference Number: 2006-10-081 (Washington, D.C.: May 2006).

¹⁰ The Pension Protection Act of 2006 amended section 501 of the Internal Revenue Code to establish additional requirements that credit counseling organizations must satisfy in order to qualify for tax-exempt status under either section 501(c)(3) or section 501(c)(4). See Pub. L. No. 109-280, § 1220, 120 Stat. 780, 1086-89 (2006) (to be codified at 26 U.S.C. § 501(q)). For example, an organization is prohibited from making loans (other than interest-free loans) to debtors. The additional requirements will not apply to 501(c)(3) and 501(c)(4) organizations existing before the enactment of the Pension Protection Act until after August 17, 2007. An IRS official noted that the revocations of credit counseling agencies' tax-exempt status were not related to changes made by the Pension Protection Act.

¹¹ When IRS issues a determination letter proposing revocation or modification of an organization's tax-exempt status, the organization may, within 30 days of the date of the letter, appeal to the Office of the Regional Director of Appeals. If no appeal is filed, the taxpayer is sent a letter giving the taxpayer 90 days to file a petition in U.S. Tax Court, U.S. Claims Court, or the U.S. District Court for the District of Columbia.

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- are nonprofit organizations;¹²
 - have an independent board of directors with the majority of members not directly or indirectly benefiting financially from the outcome of the counseling services;
 - charge a reasonable fee for counseling services;
 - provide full disclosure to a client on certain prescribed items;
 - provide for the safekeeping and payment of client funds, including auditing the trust accounts annually and bonding employees;
 - provide trained counselors with adequate experience; and
 - have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

The act required the Trustee Program to undertake a thorough review of the qualifications of a credit counseling agency before approving it to provide pre-filing counseling services. Providers are initially approved for a probationary period not to exceed 6 months; at the conclusion of this period, they must reapply and the Trustee Program can approve them for an additional 1-year period. In July 2006, the Trustee Program adopted an interim final rule that set forth application procedures designed to ensure that only organizations that met the minimum qualification standards set forth in the Bankruptcy Act would be approved to provide services.¹³ The rule established criteria by which the Trustee Program will evaluate whether applicants have satisfied the statutory standards. For example, the rule specified factors that indicate whether an applicant will be

¹² Nonprofit status is a state law concept. The Bankruptcy Act does not require that a credit counseling agency be qualified as a 501(c)(3) tax-exempt organization in order to be an approved provider. However, because most federal tax-exempt organizations are nonprofit organizations, an organization's federal tax-exempt status is one factor considered by the Trustee Program in determining an agency's nonprofit status for purposes of being an approved provider.

¹³ Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees, 71 Fed. Reg. 38076 (2006) (interim final rule).

providing counselors with adequate training and experience.¹⁴ The rule also established procedures permitting the Trustee Program to remove agencies from the approved list, including an administrative review process before removal.¹⁵

As with credit counseling providers, the Bankruptcy Act also established minimum qualification standards for debtor education providers. For example, the act stated that these entities must provide personnel with adequate experience and training and use appropriate learning materials and teaching methodologies. The act also required that the provider have adequate facilities in reasonably convenient locations or, alternatively, provide instruction by telephone or through the Internet. Debtor education providers also must keep records to permit evaluation of a course's effectiveness. The act does not require debtor education providers to be nonprofit entities. The Trustee Program's interim final rule set forth application procedures and specified the certification standards for an agency's instructors, established course procedures and recordkeeping requirements, and identified the topics that the courses must include.¹⁶

The Trustee Program Developed an Approval Process Designed to Help Ensure Compliance with Statutory and Program Requirements

The Trustee Program established the Credit Counseling and Debtor Education Unit in June 2005 to implement the relevant provisions of the Bankruptcy Act, which went into effect in October 2005. Because the Trustee Program had no prior experience or expertise in this area, the unit sought input from a wide variety of stakeholders, including state and federal agencies, credit counseling representatives, consumer advocates, and academics. In June 2005, the unit developed application forms and procedures and a basic process for approving providers.¹⁷ A wide range of

¹⁴ Section 106(e) of the Bankruptcy Act amended the bankruptcy code to require that pre-filing credit counseling agencies must provide counselors with adequate training and experience in providing credit counseling. 11 U.S.C. §111(c)(2)(F). The interim final rule specifies that a counselor will be deemed to have "adequate training and experience" if the counselor is accredited or certified by a recognized independent organization, or has successfully completed a course of study acceptable to the Trustee Program and has worked a minimum of 6 months in a related area. 71 Fed. Reg. at 38078-79 (to be codified at 28 C.F.R. § 58.15(f)(2)).

¹⁵ 71 Fed. Reg. at 38081 (to be codified at 28 C.F.R. § 58.17).

¹⁶ 71 Fed. Reg. at 38082 – 84 (to be codified at 28 C.F.R. § 58.25).

¹⁷ OMB No. 1105-0084 (Exp. 12/31/2005), *Application for Approval as a Nonprofit Budget and Credit Counseling Agency*, and OMB No. 1105-0085 (Exp. 12/31/2005), *Application for Approval as a Provider of a Personal Financial Management Instruction Course*.

industry participants told us that the Trustee Program had generally been successful in setting up an infrastructure, establishing guidance and an application process, and approving providers within a very limited time frame.

Credit counseling agencies applying to become approved providers—or reapplying to maintain their status as providers—must provide the Trustee Program with a variety of information used to evaluate the agencies’ qualifications. Among the information that applicants are required to disclose is

- names and other data on current and former officers, directors, and trustees, including whether any have been convicted of certain crimes;
- data on the agency, including how long it has been in business, the number of clients it has served, and relevant licenses, accreditations, and association memberships;
- revocations of licenses or accreditations, legal actions and investigations, and disciplinary or enforcement actions;
- audited financial statements for the previous 2 years for applicants that offer debt management plans;
- nonprofit status, including any correspondence with IRS related to section 501(c)(3) tax-exempt status;
- information on the nature and content of the credit counseling services provided, such as the average length of a session;
- written materials, such as handouts and protocols, used in providing credit counseling services; and
- information on debt management plans serviced by the agency.

To understand and assess the Trustee Program’s process for reviewing applications for credit counseling and debtor education, we conducted a detailed review of the case files of 32 applications that had been approved

and 11 applications that had been denied.¹⁸ Our case file review found that the Trustee Program's process for reviewing applicants was generally systematic and thorough and designed to ensure that the applicants approved by the program met the qualification standards set forth in the Bankruptcy Act. In reviewing applications, analysts in the Counseling and Debtor Education Unit used a checklist to ensure that each applicant satisfied the statutory and application requirements and had provided documented evidence to show sufficient experience, qualifications, and proficiency. In many cases, applicants had to provide additional information. The Trustee Program also required some applicants to make modifications to their programs or processes before approving the application. For example, in several cases we reviewed, applicants were required to add additional material to the disclosure statements provided to clients. In another case, an Internet-based counseling provider was required to ensure that its counseling sessions added opportunities for direct interaction between the debtor and a counselor.

The Trustee Program's review process also includes measures to evaluate the applicants' character and standing in the credit counseling industry. For example, Trustee Program officials told us that they consult publicly available information, such as the Web site of the Better Business Bureau, and conduct an Internet search on applicants for information on their character and corroboration of information submitted. In addition, higher-risk applicants are evaluated more rigorously. For instance, agencies that enter a high proportion of clients into debt management plans may be asked to provide additional information on the number and nature of these plans. As of October 2006, the Trustee Program had rejected 96 applications to provide credit counseling or debtor education services. In most of the cases we reviewed where the applicant was rejected, it had not provided sufficient documentation to demonstrate its nonprofit status, the existence of an independent board of directors, or its ability to perform adequate counseling. In addition, as of October 2006, 123 applications were withdrawn before being approved or rejected. Thus, according to the Trustee Program, out of 680 original applications, 64 percent had been approved by the Trustee Program, 32 percent had been either rejected or withdrawn, and 4 percent were still in the process of being reviewed.

¹⁸ Of the 32 approved applications we reviewed, 15 were for credit counseling and 17 were for debtor education, and they represented approximately 77 percent and 67 percent, respectively, of the certificates issued between January 9, 2006, and October 17, 2006. Of the 11 denied applications we reviewed, 6 were for credit counseling and 5 were for debtor education.

During the period between July 2005 and January 2007, approval of credit counseling and debtor education applications took an average of about 7 weeks from the time they were submitted, according to information provided by the Trustee Program. In some cases, the approval of an application can be lengthy—38 weeks in one instance—in part because applicants often are asked to provide additional information. Some providers we spoke with said they believed that the review process could have been more streamlined—for example, one provider told us it was asked to provide the same information twice. A Trustee Program official noted that the credit counseling and debtor education requirement was still relatively new and the program is continuing its efforts to streamline and improve the application process.

Trustee Program officials told us they are currently developing procedures for conducting audits of selected providers that have been approved for credit counseling or debtor education. These audits, known as Quality Service Reviews, are expected to include on-site inspections that will examine, among other things, the quality of providers' services and compliance with statutory and program requirements.

Few Complaints Raised about Providers' Competence or Integrity, although IRS Is Examining the Tax-Exempt Status of Four Providers

As of October 2006, the Trustee Program had approved 153 credit counseling providers. As required by statute, all of the credit counseling providers were nonprofit organizations, and about 94 percent of them had tax-exempt status under section 501(c)(3) of the Internal Revenue Code. While some of the approved agencies were relatively new organizations, about 90 percent had more than 5 years of experience conducting credit counseling. The three largest credit counseling providers—Consumer Credit Counseling Services of Greater Atlanta, GreenPath Debt Solutions, and Money Management International—represented more than half of all prefiling credit counseling certificates issued nationwide between January and October 2006. Many of the approved counseling agencies were members of the National Foundation for Credit Counseling, which industry participants told us is regarded as having high membership

standards. In addition, many of these providers were accredited by the Council on Accreditation.¹⁹

The Trustee Program had also approved 268 debtor education providers as of October 2006. Many of these providers also provided credit counseling services and the largest three provided almost half of all debtor education sessions nationwide. As of March 2006, about one-third of the debtor education providers had tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Several Chapter 13 trustees—individuals appointed by United States trustees to administer bankruptcy cases—were approved to provide debtor education, as were some educational institutions, such as community colleges.

Complaints Have Been Limited

As noted earlier, prior to the implementation of the Bankruptcy Act, concerns had been raised that debtors required to receive pre-filing credit counseling could be exposed to unfair and deceptive practices by unscrupulous agencies. However, the great majority of representatives of consumer advocacy groups, federal agencies, industry participants, and other stakeholders we spoke with believed that the credit counseling agencies approved by the Trustee Program have been reputable. In addition, no federal or state law enforcement officials we spoke with identified any federal or state enforcement actions related to consumer protection issues against any providers subsequent to their approval.²⁰

Between October 2005 and October 2006, the Trustee Program received 124 complaints about credit counseling and debtor education providers

¹⁹ The data related to providers' experience and accreditation were provided by the Trustee Program and are as of March 2006, when there were 142 providers. The National Foundation for Credit Counseling includes more than 100 nonprofit member agencies, many of which use the name "Consumer Credit Counseling Service®." Its member agency counselors must complete training in its Counselor Certification Program. The Council on Accreditation is an independent, third-party, not-for-profit accrediting organization that has reviewed more than 1,500 social service programs to ensure compliance with best-practices standards.

²⁰ Organizations that qualify for tax-exempt status under Internal Revenue Code section 501(c)(3) are exempt from certain federal and state consumer protection laws. For example, 501(c)(3) corporations are not subject to the Credit Repair Organizations Act, which imposes restrictions on credit repair organizations aimed at protecting the public from unfair or deceptive advertising and business practices. See 15 U.S.C. §§ 1679 *et seq.* Generally, a credit repair organization is defined as any person who provides, for a fee, services for the express or implied purpose of improving a consumer's credit record, credit history, or credit rating. 15 U.S.C. § 1679a(3).

out of more than 930,000 certificates issued.²¹ Half of these complaints were made by bankruptcy attorneys, while about one-quarter were made by consumers and one-quarter by service providers, bankruptcy courts, and others. Our review of a selection of complaints found that the Trustee Program took action to assess and follow up on each complaint, including notifying the relevant provider and asking for a response to the allegation. Providers typically gave the Trustee Program a detailed reply and documentation related to the alleged complaint. For example, one provider offered information based on a tape recording of the counseling session in question.

Our analysis found that the many of the complaints were related to administrative issues, such as the timely issuance of a debtor's certificate or the status of a provider's license. In addition, 20 complaints alleged unfair or inappropriate practices by providers. These included cases where providers were accused of giving legal advice, discouraging customers from filing for bankruptcy, or failing to inform clients of the possibility of a fee waiver. In many cases, the provider offered evidence that satisfied the Trustee Program that the complaint was without merit. In a few cases, the provider acknowledged to the Trustee Program that the complaint had merit and responded accordingly—for example, refunding a fee to a client or implementing additional procedures to ensure staff compliance with relevant policies. In no case did a complaint result in the Trustee Program removing a provider from the approved list, according to a program official.

IRS Is Examining Four Providers Approved by the Trustee Program

As noted earlier, IRS has put credit counseling organizations under additional scrutiny in recent years. As part of its Credit Counseling Compliance Project, which began in October 2003, the agency began examinations of 63 credit counseling agencies, which at the time represented more than half of the industry's revenue. The examinations focused on whether the agencies were charitable organizations meeting the requirements for tax exemption under section 501(c)(3) of the Internal

²¹ According to Trustee Program data, 939,193 credit counseling and debtor education certificates were issued between January 9, 2006, and October 17, 2006. The program does not have data on the number of certificates issued between October 17, 2005, when the counseling and education requirements went into effect, and January 9, 2006.

Revenue Code.²² As of March 2007, IRS had completed examinations of 47 credit counseling agencies and in all cases the completed examinations resulted in either revocation, proposed revocation, or other termination of tax-exempt status. According to a May 15, 2006, IRS press release, the revocations occurred because these organizations did not provide the level of public benefit required to qualify for tax exemption. The agency stated that many of these agencies served primarily to get clients into debt management plans, offered little or no counseling or education, and appeared to be motivated mostly by profit. In many cases, IRS stated, these agencies also served the private interests of related for-profit businesses, officers, and directors.

No credit counseling provider approved by the Trustee Program had had its federal 501(c)(3) tax-exempt status revoked as of March 2007, according to publicly available documents we reviewed. However, IRS officials told us that four of the credit counseling agencies still under examination were agencies approved by the Trustee Program. A Trustee Program official told us that it was aware of these examinations at the time that it approved these applicants, but had determined that the four agencies met the statutory and program requirements despite the IRS scrutiny.²³

The Trustee Program can receive information about a provider's tax status through several mechanisms. As part of its process of reviewing applications and reapplications, a Trustee Program official told us that the program consults publicly available information from IRS or the applicable state to confirm the applicant's nonprofit status. As noted earlier, the program's application forms also require that new applicants—as well as current providers seeking their annual reapproval—disclose any audit or investigation by IRS or other federal or state agency. In addition, the interim final rule requires that providers, once approved, promptly notify

²²To qualify for exemption from federal income tax under section 501(c)(3), an organization must be organized and operated exclusively for one or more exempt purposes specified by statute, such as religious, charitable, scientific, literary, or educational purposes. On May 9, 2006, IRS issued a Chief Counsel Advice Memorandum (CCA 200620001) that provided a legal framework to determine whether a credit counseling organization that offers counseling and debt management plans to the general public operates in furtherance of educational purposes consistent with section 501(c)(3).

²³ Because these four agencies were under active examination at the time of our review, IRS and the Trustee Program did not provide us with the identities of these four providers or information on the status of their examinations.

the Trustee Program of any circumstances that would materially change a response to any section of the application, which, according to a Trustee Program official, would include the initiation of an IRS investigation.²⁴ The interim final rule also requires that providers notify the program immediately if IRS cancels or terminates their tax-exempt status.²⁵ Applicants and providers are required to submit, upon request, a written waiver authorizing the Trustee Program to obtain confidential information about the agency from IRS.²⁶ Program officials told us they have used such waivers in several cases to get information on whether a provider is under examination by IRS and the status of the examination process. The waiver also gives the program access to any proposed or final revocation letter from IRS to a provider.

A Trustee Program official told us that when the program learns that an applicant is under examination by IRS, the program obtains and reviews correspondence between the applicant and IRS in order to understand the basis for the examination. For example, the proposed revocation letter includes the reasons why IRS seeks to revoke the agency's tax-exempt status. In addition, the Trustee Program official said that applications of agencies under IRS examination receive additional scrutiny related to their use of debt management plans and potential conflicts of interest. As noted earlier, a Trustee Program official told us the program had approved the four applicants under IRS examination because after careful review it was determined that the applicants met statutory and program requirements.

The official also noted that IRS may determine that a credit counseling agency is not tax exempt under section 501(c)(3) because it does not have an exclusively charitable or educational purpose, but such a finding would not necessarily preclude the applicant from meeting the statutory or program requirements for becoming an approved provider. Although the statute requires credit counseling providers to be nonprofit organizations, it does not require that they be tax exempt under section 501(c)(3).²⁷ The interim final rule does allow the Trustee Program to immediately remove a

²⁴ 71 Fed. Reg. at 38081 (to be codified at 28 C.F.R. § 58.16(i)(1)).

²⁵ 71 Fed. Reg. at 38081 (to be codified at 28 C.F.R. § 58.16(i)(4)(i)).

²⁶ 71 Fed. Reg. at 38080 (to be codified at 28 C.F.R. § 58.15(h)(3)).

²⁷ As noted earlier, roughly 6 percent of the credit counseling agencies approved by the Trustee Program are not tax exempt under section 501(c)(3) of the Internal Revenue Code, although they are nonprofit organizations under other applicable state laws.

credit counseling agency from the approved list if IRS revokes the agency's tax-exempt status.²⁸ A Trustee Program official told us that this provision was intended to protect consumers in cases where IRS's revocation is based on conduct that raises questions about the integrity of the provider. A program official told us that should IRS revoke an agency's tax-exempt status, the program would carefully review the reasons for the revocation and take whatever actions were appropriate.

Counseling and Education Sessions Meet Statutory and Program Requirements, but a Wide Range of Observers Question the Value of the Counseling Requirement

According to the Bankruptcy Act, the prefiling credit counseling session should provide clients with individualized assessments and help them develop a plan to respond to their financial situation. The great majority of counseling is conducted by telephone or via the Internet rather than in person. We did not find evidence that counselors were providing biased information and few clients appear to be entering debt management plans. However, a wide range of observers questioned the value of the prefiling credit counseling requirement. It was intended to help consumers make informed choices about their options, but anecdotal evidence suggests that by the time most consumers receive the counseling, their financial problems are dire and they have few viable alternatives to bankruptcy. The Trustee Program does not track and monitor the outcomes of counseling sessions because it is not required to by statute, but such data would be useful in determining whether the counseling requirement is meeting its intended goal. Finally, the pre-discharge debtor education requirement—a general financial literacy course covering budgeting, money management, credit, and consumer protection—is believed by most observers we spoke with to be beneficial.

Credit Counseling Sessions Are Designed to Provide Debtors with Individualized Assessments

The Bankruptcy Act describes the required prefiling credit counseling as “an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outline[s] the opportunities for available credit counseling and assist[s] such individual in performing a related budget analysis.”²⁹ The act requires that this session include an analysis of a client's current financial condition and the factors that caused this

²⁸ 71 Fed. Reg. at 38081 (to be codified at 28 C.F.R. § 58.17(f)(8)).

²⁹ According to a Trustee Program official, the statutory language requiring a “briefing. . . that outline[s] opportunities for available credit counseling” has been interpreted by the Trustee Program and providers involved to mean a credit counseling session. 11 U.S.C. § 109(h)(1).

condition and help develop a plan to respond to the client's problems that would not involve incurring additional debt. The Trustee Program's interim final rule indicated that counseling sessions should average 60 to 90 minutes in length and prohibited credit counselors from providing debtors with legal advice, unless otherwise authorized by law.³⁰ The Trustee Program has not published additional formal guidance or instruction about the nature or content of the counseling session. Trustee Program officials told us that it was widely understood that the content of the prefiling counseling session would closely resemble the traditional sessions that reputable credit counseling agencies have provided for many years.

Our review of the Trustee Program's case files and counseling materials of 15 credit counseling providers—representing more than two-thirds of certificates issued—showed that the content of the credit counseling sessions, as described in the written materials, was in accordance with the requirements of the Bankruptcy Act. In general, the different providers had similar curricula and materials, although some providers covered certain topics more thoroughly than others. For example, some providers included more detailed discussions of topics such as modifying spending habits, avoiding identity theft, or negotiating with creditors. Credit counseling sessions generally began with providers collecting data on the client's finances, including sources and amount of income, debt, and expenses. In some cases, providers received some of this information from the client in advance via the Internet or from the client's credit report. Individual counselors then typically analyzed the data with a software program and provided the client with a personalized budget. They discussed the client's financial goals and potential opportunities for reducing spending and paying off debt. Counselors then described the client's options—for example, developing a budget, entering into a debt management plan, or filing a Chapter 7 or Chapter 13 bankruptcy. Although counselors are prohibited from giving legal advice or recommending whether or not clients should file for bankruptcy, some providers describe the advantages and disadvantages of each alternative. When the session is over, the counselor issues a certificate verifying that the client has completed the prefiling credit counseling requirement.

³⁰ See 71 Fed. Reg. at 38079 (2006) (to be codified at 28 C.F.R. § 58.15 (f)).

Most Credit Counseling Is Conducted by Telephone or Internet

Although most providers offer clients the option of conducting credit counseling sessions in person, available data indicate the great majority of debtors fulfill their pre-filing requirements by telephone or via the Internet. Trustee Program data collected on certificates issued between July 11 and October 17, 2006, indicated that 45 percent of all pre-filing counseling sessions were conducted by telephone, 43 percent were conducted via the Internet, and 13 percent were conducted in person.³¹ Similarly, a survey by the National Foundation for Credit Counseling of its member agencies that conduct pre-filing counseling found that between October 17, 2005, and August 31, 2006, 61 percent of their sessions were conducted by telephone, 24 percent via the Internet, and 15 percent in person.

Academic researchers, counseling providers, and other experts we spoke with said that although in-person counseling may have advantages, telephone counseling can be an effective method of delivery. While some providers noted that counseling conducted face-to-face can be beneficial when addressing more complex financial situations, other providers and industry participants noted that telephone counseling may allow clients more convenience and flexibility and may be easier for people with mobility problems, such as the elderly. A recent study by Georgetown University's Credit Research Center found no significant difference in the outcomes of credit counseling sessions conducted by telephone or in person.³² Specifically, the study found that clients receiving in-person and telephone counseling had similar risks of bankruptcy or credit problems 2 years later. Our review of materials used to facilitate credit counseling sessions indicated that they generally had the same content and structure regardless of whether they were delivered in person, by phone, or via the Internet.

To receive pre-filing credit counseling via the Internet, a client generally logs on to the provider's Web site and inputs the same data on his or her finances that would be provided during a telephone or in-person session. On the basis of these data, the client is typically provided information and a financial analysis, including a description of the available alternatives. Trustee Program officials told us all approved Internet-based credit

³¹ Percentage does not add up to 100 due to rounding.

³² M. Staten and J. Barron, *Evaluating the Effectiveness of Credit Counseling. Phase One: The Impact of Delivery Channels for Credit Counseling Services* (May 31, 2006). The study reviewed traditional credit counseling rather than counseling provided to satisfy the requirements of the Bankruptcy Act.

counseling sessions were required to include a separate component in which the client communicated individually with a counselor. Providers told us that after completing the Internet portion of the counseling session, the client could speak with a counselor by telephone or, in some cases, via Web chat. During these one-on-one communications, which one provider told us typically last 10 to 20 minutes, counselors reviewed the budget analysis with the client and answered any questions. The Trustee Program also requires providers to have procedures to effectively verify their clients' identity. We did not identify any significant research on the effectiveness of credit counseling facilitated via the Internet. The Trustee Program told us that it has contracted with the RAND Corporation to review the comparative effectiveness of credit counseling delivered via telephone, Internet, and in person. A report from RAND is expected to be issued by July 2007.

Available Evidence Indicates That Prefiling Credit Counseling Results in Few Debt Management Plans

The Bankruptcy Act includes provisions designed to help ensure that credit counseling sessions provide objective information and present the client with alternatives in a neutral manner. For example, the act requires that counseling providers be nonprofit entities with independent boards of directors and prohibits counselors from receiving commissions or bonuses based on the outcomes of the counseling sessions. Despite these provisions, some consumer advocacy groups, policymakers, and others expressed concerns that credit counseling provided under the Bankruptcy Act might sometimes be biased and not in the clients' best interests. Specifically, concerns existed that providers might inappropriately discourage clients from filing for bankruptcy and instead encourage them to enter into debt management plans that benefited the agency but not the debtor.

However, available evidence indicates that only a very small number of clients receiving prefiling credit counseling have entered into any debt management plan. Counseling providers and representatives of bankruptcy attorneys we spoke with generally estimated that fewer than 2 percent of prefiling credit counseling clients entered debt management plans. Further, a survey by the National Foundation for Credit Counseling of its member agencies indicated that about 3 percent of clients who signed up for prefiling counseling from October 2005 through August 2006 enrolled in a debt management plan. In general, representatives of consumer groups, panel trustees, and others told us that they had not observed cases in which clients receiving prefiling credit counseling had been inappropriately encouraged to enter debt management plans or avoid filing for bankruptcy. As of October 2006, the Trustee Program had

received five formal complaints (out of more than 650,000 credit counseling certificates issued) alleging that providers made harmful or inappropriate recommendations. Our review of the documentation associated with these five complaints indicated that in each case the provider gave the Trustee Program a comprehensive response. In each of these five cases, the program was satisfied that either the complaint lacked merit or the provider had taken appropriate steps to remediate the problem.

Many Question the Value of the Credit Counseling Requirement, but Data on Outcomes Are Limited

The Conference Report accompanying the Bankruptcy Act indicated that the purpose of the credit counseling provisions was to ensure that consumers could “make an informed choice about bankruptcy, its alternatives, and consequences.”³³ The report further noted that the counseling was intended to give consumers in financial distress “an opportunity to learn about the consequences of bankruptcy—such as the potentially devastating effect it can have on their credit rating” before they decided to file for bankruptcy relief.³⁴

However, it is unclear whether the credit counseling requirement is achieving its intended purpose. While quality credit counseling can, in general, be beneficial, a wide range of observers we spoke with—including representatives of federal agencies, bankruptcy attorneys, and panel trustees; consumer advocates; and several counseling providers—told us that the timing of the counseling conducted to fulfill the requirement of the Bankruptcy Act could mitigate its value. The federal Financial Literacy and Education Commission noted in its national strategy that the use of reputable credit counseling could have a significant positive impact, making borrowers more creditworthy and decreasing their debt. But the strategy also recommended that consumers seek credit counseling services early, when financial problems start, to avoid potential bankruptcy.³⁵ In practice, however, by the time individuals obtain pre-filing credit counseling, they usually have already consulted with a bankruptcy attorney and have serious financial problems, such as imminent foreclosure of their homes. As such, anecdotal evidence indicates that the

³³ H.R. Conf. Rep. No. 109-31, Part I, at p. 2 (2005).

³⁴ H.R. Conf. Rep. No. 109-31, Part I, at p. 18 (2005).

³⁵ Financial Literacy and Education Commission, *Taking Ownership of the Future: The National Strategy for Financial Literacy* (Washington, D.C.: April 2006), pp. 31, 32, and 38.

great majority of clients receiving prefiling counseling have few viable alternatives to bankruptcy.³⁶ The Bankruptcy Act's credit counseling requirement therefore may not be serving its purpose of helping consumers make informed choices about whether or not to file for bankruptcy. Providers and others told us that many clients perceived the counseling session as an administrative obstacle rather than a useful exercise.

Questions about the value of the prefiling requirement stem from a widespread belief among observers that nearly all of the consumers that receive the credit counseling subsequently file for bankruptcy. Yet the evidence for this is largely anecdotal, as comprehensive data do not currently exist on the outcomes of those consumers who receive prefiling credit counseling. Neither the Trustee Program, credit counseling providers, or any other party currently track how many consumers who receive credit counseling subsequently file for bankruptcy within the 180 days during which the certificates may be used. Similarly, little is known about the alternatives chosen by those consumers who do not file for bankruptcy or how the credit counseling affects their decisions.³⁷

During roughly the first half of 2006, some 381,005 counseling certificates were issued and 263,408 bankruptcy petitions filed.³⁸ However, this information on its own does not provide a reliable estimate of how many consumers who received counseling subsequently filed for bankruptcy, for several reasons. First, in cases that involve a husband and wife filing a joint bankruptcy petition, each must obtain counseling and be issued a

³⁶ The number of bankruptcy filings increased substantially just prior to the implementation of the Bankruptcy Act because many consumers believed it would be more difficult to receive bankruptcy protection once the act went into effect, according to organizations representing bankruptcy attorneys and other observers we spoke with. Debtors filing for bankruptcy shortly after the implementation of the act may therefore not be representative of future debtors.

³⁷ As of January 2007, providers must submit data semiannually to the Trustee Program on the number of their prefiling credit counseling clients who enter into debt management plans. In addition, the Trustee Program's Quality Service Reviews will examine information on the outcomes of counseling sessions at selected providers. However, the information these sources will provide is limited, in large part because providers do not track whether their clients subsequently filed for bankruptcy.

³⁸ Data on the number of certificates issued were provided by the Trustee Program and cover January 9 through July 3, 2006. Data on the number of bankruptcy petitions filed were provided by the Administrative Office of the U.S. Courts and cover January 1 through June 30, 2006.

certificate. Second, a time lag may exist between the time the certificate is issued and the time of the filing, because the certificate is good for 180 days. For this reason, reported bankruptcy filings during a given time frame will not reflect all the bankruptcies that will be filed using the certificates issued in that time frame. Third, certificates are sometimes cancelled and reissued for administrative reasons (such as the misspelling of the client's name), so that one person is issued two certificates. Finally, occasionally a client may receive pre-filing credit counseling but not be issued a certificate—for example, if the client decides not to file for bankruptcy.

When a provider completes a pre-filing credit counseling session, it uses a Web-based system operated by the Trustee Program to issue the client a certificate, which includes a unique certificate number. While the Trustee Program maintains a list of certificate numbers, for privacy purposes it does not receive any information, including names, about the clients who were issued certificates. A bankruptcy petitioner must provide to the court a certificate to document having satisfied the pre-filing counseling requirement. However, the courts do not track or report the unique numbers assigned to these certificates. As a result, it is not possible to link individuals who have received pre-filing credit counseling with individuals who have filed for bankruptcy.

A Trustee Program official told us that the program had not taken steps to track and monitor the outcomes of credit counseling sessions because this effort was not part of its statutory responsibilities. The Bankruptcy Act, he noted, requires the Trustee Program to test and evaluate the effectiveness of a pilot debtor education curriculum, but contains no analogous provisions for monitoring or evaluating credit counseling.³⁹ As we have reported in the past, meaningful data on program outcomes and costs are

³⁹ Section 105 of the Bankruptcy Act requires the Trustee Program to develop a debtor education course that can be used to satisfy the debtor education requirement. The act required the program to pilot the curriculum and materials in six judicial districts for 18 months. The Trustee Program is required to test the effectiveness of the course along with a sample of existing consumer education programs and report its findings to Congress. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, §105, 119 Stat. 23, 36-37.

essential for appropriate oversight and decision making.⁴⁰ Without reliable data on the outcomes of the pre-filing credit counseling sessions, policymakers and program managers lack information that would allow them to determine how well the statutory requirement is truly serving to inform consumers about their options.

Debtor Education Sessions Are Designed to Offer Financial Management Skills

The Bankruptcy Act describes the debtor education requirement as an “instructional course concerning personal financial management” that could be offered in person, by telephone, or via the Internet.⁴¹ The Trustee Program’s interim final rule specified that the course should average 2 hours in length and include written information and instruction on four major topics:

- budget development, which includes, calculating income, identifying and classifying monthly expenses, and setting short-term and long-term goals;
- money management, which includes keeping adequate financial records, developing decision-making skills to distinguish between wants and needs, comparison shopping, maintaining appropriate levels of insurance, and saving for emergencies;
- wise use of credit, which includes understanding the types, sources, and costs of credit and loans; identifying debt warning signs; using credit appropriately and identifying alternatives to credit; and checking a credit rating;
- consumer information, including public and nonprofit resources for consumer assistance and applicable consumer protection laws and regulations.⁴²

In reviewing the debtor education curricula, teaching guides, and other materials of 17 debtor education providers, we found that the content included the topics and elements that the Trustee Program required. In

⁴⁰ For example, see GAO, *Program Evaluation: OMB’s PART Reviews Increased Agencies’ Attention to Improving Evidence of Program Results*, [GAO-06-67](#) (Washington, D.C.: Oct. 28, 2005); *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, [GAO-04-38](#) (Washington, D.C.: Mar. 10, 2004); and *Managing for Results: Using GPRA to Assist Congressional and Executive Branch Decisionmaking*, [GAO/T-GGD-97-43](#) (Washington, D.C.: Feb. 12, 1997).

⁴¹ See 11 U.S.C. § 111(d)(1)(C).

⁴² 71 Fed. Reg. at 38082 (to be codified at 28 C.F.R. § 58.25(f)).

general, we found the curricula of different providers to be fairly similar, although some providers included additional details or emphasis on certain topics. According to a Trustee Program official, to cover the required topics, most of the debtor education providers used 1 of about 15 standard curricula—for example, the National Foundation for Credit Counseling’s “Live a Richer Life” or the Federal Deposit Insurance Corporation’s “Money Smart.”

The Bankruptcy Act required that the Trustee Program, after consulting with a wide range of experts in the field, also develop its own curriculum and training materials for debtor education. The act required the program to test the effectiveness of this curriculum and materials for 18 months in six judicial districts.⁴³ In September 2005, the Trustee Program contracted with the Education Development Center, a nonprofit research firm, to develop the pilot curriculum and with Abt Associates, a private consulting firm, to evaluate it. The curriculum, entitled “Financial Education: Principles and Practices,” was presented by academic institutions in the six judicial districts selected for the pilot and was still being evaluated as of March 2007.⁴⁴

Trustee Program data collected on certificates issued between July 11 and October 17, 2006, indicated that 50 percent of predischarge education sessions was conducted by Internet, 29 percent was conducted via telephone, and 21 percent was conducted in person. In-person debtor education courses are typically conducted in a group classroom setting, while telephone sessions are conducted in one-on-one or group settings. For Internet sessions, the client generally reads the educational material and takes an on-line quiz, and then may have a follow-up discussion with an instructor. The Trustee Program does not require that debtor education conducted via the Internet include individual communication with a counselor, but a counselor must be made available to answer any questions clients may have.

⁴³ Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, § 105, 119 Stat. 23, 36-37.

⁴⁴ Executive Office for U.S. Trustees, U.S. Department of Justice, *Financial Education: Principles and Practices* (Washington, D.C.: March 2006). The judicial districts in which the curriculum was tested were the Northern District of Illinois, District of New Jersey, Northern District of Texas, Eastern District of Virginia, Western District of Virginia, and Eastern District of Washington.

Most representatives of consumer groups, panel trustees, bankruptcy attorneys, and others we spoke with believed that the pre-discharge debtor education course was likely to help improve consumers' financial literacy. They noted, for example, that consumers completing bankruptcy should receive guidance on budgeting, avoiding future debt, and rebuilding credit. The National Association of Chapter 13 Trustees established a similar debtor education course several years before the Bankruptcy Act took effect. According to representatives of Chapter 13 trustees, these courses were particularly helpful for debtors under Chapter 13 bankruptcy protection, who operate under a repayment plan for up to 5 years, and debtors who took the course were more likely to successfully complete their repayment plans.⁴⁵

Provider Fees Are Generally Considered Reasonable, Although Fee Waiver Policies Vary

The Bankruptcy Act requires that providers charge reasonable fees and provide their services without regard to a client's ability to pay. Neither the statute nor the Trustee Program's interim final rule provide specific criteria for what constitutes a "reasonable fee" or "client's ability to pay." Available evidence indicates that credit counseling and debtor education sessions typically cost about \$50 or less, an amount that representatives of consumer groups, legal organizations, and others we spoke with generally believed to be reasonable. Providers varied in their policies and practices for waiving fees. The Trustee Program has not issued rules or specific guidance on what constitutes a debtor's ability to pay because it wanted to give providers the flexibility to respond to market conditions. However, formalized guidance could be beneficial because it could, among other things, set a minimum benchmark for reducing or waiving fees.

⁴⁵ Chapter 13 trustees administer cases filed under Chapter 13 of the Bankruptcy Code. The National Association of Chapter 13 Trustees is a nonprofit membership organization that includes Chapter 13 Trustees and staff, attorneys, judges, and other related professionals.

Providers Must Charge Reasonable Fees and Provide Services Regardless of Clients' Ability to Pay

The Bankruptcy Act requires that credit counseling and debtor education providers charge reasonable fees for their services and provide these services without regard to the client's ability to pay the fee.⁴⁶ However, the statute did not specify what fees are considered "reasonable" nor what constitutes a client's "ability to pay." Before the Bankruptcy Act came into effect, the Trustee Program noted on its Web site that based on information provided by the industry, it believed that credit counseling would generally be available for a fee ranging from free to \$50. The site also noted that a number of variables may affect an agency's fee structure, including geography, types of services provided, administrative costs, and the presence of alternate funding sources. The Trustee Program said that in determining whether fees were reasonable, it would consider these factors as well as the fees customarily charged in the industry for similar services. The site did not provide information about the expected fees for debtor education.

In its interim final rule, adopted in July 2006, the Trustee Program did not provide specific guidance on what dollar amount would constitute a reasonable fee nor the criteria providers should use in determining a client's ability to pay. A Trustee Program official told us that in addition to the program's publicly available guidance, it has provided informal feedback to providers who have inquired about the appropriateness of their fee structures. The Trustee Program requires that providers disclose their fee schedules in their applications, and as of July 2006, has also required providers to disclose their policies for reducing or waiving fees based on the client's ability to pay.⁴⁷ The official told us that the program reviews providers' waiver policies during the application process to ensure that the policies are clear and objective, and in some cases have rejected applicants for inadequate fee waiver policies. The interim final rule specified that providers must advise clients of their fee schedules before services are rendered and inform them that services are available for free or at a reduced rate based on their ability to pay. It also prohibited providers from charging a separate fee for issuing the counseling and education certificates.

⁴⁶ 11 U.S.C. §§ 111(c)(2)(B) and 111(d)(1)(E). See also Pension Protection Act of 2006 §1220 (to be codified at 26 U.S.C. § 501(q)) (imposing requirements regarding fees charged by credit counseling organizations that are tax exempt under Internal Revenue Code § 501(c)(3)).

⁴⁷ 71 Fed. Reg. at 38078-79 and 38082-83 (to be codified at 28 C.F.R. §§ 58.15(e) and 58.25(j)).

While Providers' Fees Are Considered Reasonable, Fee Waiver Policies Vary

The Trustee Program requires providers to report in their applications and reapplications the fees that they charge, although the program does not track these data centrally. Trustee Program staff, providers, and trade association representatives told us that most providers charge around \$50 each for their credit counseling and debtor education sessions. This estimate was corroborated in survey data collected by the National Foundation for Credit Counseling from 107 providers, which reported charging an average fee of \$47 for prefiling credit counseling and \$43 for debtor education.⁴⁸ In addition, each of the three largest providers, which as of October 2006 had issued about half of all certificates, told us that they charged exactly \$50 for an individual credit counseling or debtor education session. Among the smaller credit counseling providers we spoke with, two told us that they charged \$50, and the others charged \$49, \$35, and \$0. Among debtor education providers we spoke with, fees ranged between \$0 and \$50 per individual session. In a few cases, we identified smaller counseling and education providers whose fees were higher, such as \$75 per session. Representatives of consumer groups and legal organizations, as well as academics and others we spoke with, generally said they believed that the fees charged by credit counseling and debtor education providers had been reasonable. Some providers said that the fees had generally been adequate to cover their costs, but others said that prefiling counseling was being subsidized by their other lines of business. Providers noted that the requirements were still relatively new and that as the true cost of providing these services in the long term became clearer, they might consider adjusting their fees.

Providers have varying policies for determining a client's ability to pay the fee. In September 2005, the National Foundation for Credit Counseling, after consulting with the Trustee Program, told its members that the program said it would be appropriate to waive counseling fees for clients with incomes less than 150 percent of the poverty line—the same eligibility threshold authorized by federal law for waiving the fees charged by the court for filing a bankruptcy petition.⁴⁹ Some providers we interviewed used as their threshold a different percentage of the poverty

⁴⁸ National Foundation for Credit Counseling, *Consumer Counseling and Education Under BAPCPA: Year One Report* (Silver Spring, Md.: Oct. 16, 2006). This report provided data on the agencies' average revenue per session, which factored in cases where fees were reduced or waived. However, the foundation provided us with the underlying data from its survey, which we used to determine the average price charged to consumers who did not have their fees reduced or waived.

⁴⁹ See 28 U.S.C. § 1930(f).

line or other criteria, such as whether the client received legal aid or disability benefits. The three largest providers all use differing criteria—one told us it waived fees for clients at or below 150 percent of the poverty line, a second for clients at or below 120 percent of the poverty line, and a third based on whether the client received free legal aid or had disability income. Providers we spoke with generally said that they allowed counselors to use their discretion to waive fees in additional circumstances as well. According to Trustee Program data, the three largest providers waived their fees 4 percent, 15 percent, and 26 percent of the time for credit counseling sessions, and 6 percent, 21 percent, and 34 percent of the time for debtor education courses. A Trustee Program official told us that three factors were responsible for the differences in the proportions of clients whose fees were reported waived. First, providers had different policies for determining ability to pay. Second, some providers chose to waive fees for some clients who did not qualify under the provider's formal policy. Third, providers were inconsistent in how they reported fee waiver data to the Trustee Program—for example, some providers counted as waivers cases in which clients were charged the fee but failed to pay.

Some policymakers and consumer groups have expressed concerns that providers might not always clearly inform clients that fees could be waived for those unable to pay. Stakeholders involved in the process told us that there had been limited anecdotal evidence to support this concern. In addition, out of more than 930,000 credit counseling or debtor education certificates issued as of October 2006, the Trustee Program had received only seven formal complaints about providers that had not waived fees or told clients about this option. Trustee Program officials noted that nearly all complaints related to fees and fee waivers were made shortly after the Bankruptcy Act went into effect and the requirements were new.

Trustee Program Has Not Issued Formal Guidance on Determining a Client's Ability to Pay

As noted earlier, neither the statute nor the Trustee Program's rulemaking provide criteria for what constitutes a client's ability to pay the fee for a counseling or education session. Some providers told us that the lack of guidance left them unsure about the criteria they should use. Eight of the 22 comments to the interim final rule submitted by providers, industry associations, and consumer groups requested that the Trustee Program provide guidance or clarification on what constitutes a client's ability to pay. In some cases, the comments suggested that the program provide objective measures or uniform criteria. Several providers we spoke with, as well as trade associations, consumer groups, and creditor organizations,

also told us that additional guidance on determining ability to pay would be beneficial.

Trustee Program officials told us that they are considering formalizing criteria, in a rulemaking, that providers should use to determine clients' ability to pay but that they have not made a final decision on the issue. Program officials told us that they were reluctant to formalize such criteria because they did not want to be too prescriptive and wanted to give providers flexibility to respond to market conditions—for example, to adjust fee waiver policies based on local economic conditions and costs of doing business. However, clearer guidance on determining a client's ability to pay could have several benefits. First, it could reduce uncertainty among providers as to what criteria are appropriate. Second, it could improve transparency by clarifying the minimum standards for waiving or reducing fees. Finally, it could help ensure that services are offered to clients regardless of ability to pay by providing guidelines for a minimum benchmark on when fees should be reduced or waived.

Supply of Providers Appears Sufficient and Actions Under Way Address Challenges Some Consumers May Face Fulfilling the Requirements

Evidence showed that as of October 2006, enough prefiling credit counseling and pre-discharge debtor education providers—153 and 268, respectively—had been approved to allow consumers to receive these services on a timely basis. Although in-person counseling or education is not easily accessible in some parts of the country, these services are available via telephone or Internet, and most debtors favored these options. Many providers offer services in several languages or provide translation services. Anecdotal evidence suggests that consumers who try to file for bankruptcy without an attorney sometimes are not aware of the credit counseling requirement. A survey of federal bankruptcy judges conducted by the Federal Judicial Center indicated that debtors who file for bankruptcy without fulfilling the credit counseling requirement can face a variety of consequences.

Enough Counseling and Education Services Exist to Meet Demand

Before the Bankruptcy Act went into effect, some members of Congress, consumer advocates, and others worried that not enough counseling services would be available within the required time frame for people filing for bankruptcy. Our review of the limited data available and anecdotal evidence indicated that as of October 2006 the supply of credit counseling and debtor education services had been adequate to meet the demand for these services. A wide range of participants in the bankruptcy process—including bankruptcy attorneys, panel trustees, a bankruptcy court representative, and service providers—told us that getting access to

these services in a timely manner had generally not been a barrier to filing or receiving discharge of debts.

When the Bankruptcy Act went into effect in October 2005, the Trustee Program had approved 71 credit counseling and 76 debtor education providers. As of October 2006, this number had risen to 153 credit counseling and 268 debtor education providers. The three largest organizations provide about 56 percent of the credit counseling sessions and about 46 percent of the debtor education sessions. While the majority of providers are local organizations offering services in particular communities, about a dozen offer services nationwide, either through a network of field offices or through telephone or Internet services. Because the great majority of debtors fulfill the credit counseling and debtor education requirements through sessions provided by telephone or via the Internet, having providers nearby is not always necessary.

A wide range of participants we spoke with told us that consumers who call to schedule a credit counseling or debtor education session can usually be accommodated within 24 hours, and sometimes much sooner. Providers sometimes refer potential clients to another provider if they cannot see a client in a timely manner. The providers we spoke with, which represented the great majority of certificates issued, told us that they currently had adequate capacity to meet demand for their bankruptcy-related services. At the same time, the volume of bankruptcy filings has been relatively low since the Bankruptcy Act became effective and the capacity of providers could potentially become an issue should bankruptcy filings substantially increase in the future. However, several large providers told us they would be able to expand their capacity if needed.

In-Person Counseling Is Not Always Available, but Few Seek It

Nearly all approved credit counseling and debtor education providers offer their clients the option of in-person sessions. As of July 2006, consumers could receive pre-filing credit counseling in person at more than 700 locations and debtor education in person at more than 1,000 locations. Comprehensive data do not exist on the precise proportion of consumers living close enough to agencies providing in-person counseling or education to comfortably travel to such a site. However, an analysis of existing data suggests that in-person counseling and education sessions are accessible to most of those who need them—particularly in metropolitan areas—but are not easily accessible in certain portions of the country. For example, judicial districts had, on average, 8 locations where consumers could fulfill the credit counseling requirement and 11 where

they could meet the debtor education requirement via an in-person session. But some large judicial districts, such as those in Alaska, North Dakota, and Wyoming, had 5 or fewer such locations. No in-person locations existed for credit counseling in the district encompassing Southern Illinois, nor was in-person debtor education available in the District of Columbia.

Some providers we spoke with said that they had not expected that there would be so little demand for in-person prefiling credit counseling and pre-discharge debtor education services, pointing out that, by contrast, more than half of their traditional credit counseling sessions were conducted in person. Because of the low demand for in-person prefiling counseling, one large provider told us that it had reallocated some of its resources—for example, by closing some local offices and expanding call centers that provide telephone counseling.

Among participants in the process with whom we spoke, the consensus was that debtors sought to conduct the counseling and education sessions by telephone or Internet because these were the quickest and most convenient methods for satisfying the statutory requirements. As noted earlier, by the time most debtors receive the counseling, they have already consulted an attorney and decided to seek bankruptcy protection and see the counseling and education sessions largely as administrative obstacles to be overcome as quickly as possible.

Although relatively few debtors appear to seek in-person services, some consumer advocates and others have said that debtors in all parts of the country should at least have the option of obtaining services in person. These parties have noted that while some debtors may find telephone counseling more convenient, others may find in-person services a more comfortable and effective option. The Trustee Program's Web site includes information about providers that offer in-person sessions and the locations for these sessions.

Steps Under Way to Address Challenges of Certain Populations in Accessing Services

Non-English Speakers

Some potential bankruptcy filers, such as those who do not speak English, have limited literacy skills, or are not represented by an attorney, may face certain challenges in accessing prefiling credit counseling and pre-discharge debtor education. The Trustee Program and the courts have certain actions planned or under way to help address these challenges.

As of October 2006, many credit counseling and debtor education providers offered their services in Spanish, and several offered services in

other languages. For example, two large nationwide providers can conduct sessions in at least 15 languages and, using a translation services contractor, can provide sessions in about 150 languages. Because these providers offer telephone counseling and have been approved to provide counseling and education in almost all judicial districts, their services are accessible to debtors nationwide. Some smaller local providers also offer in-person and telephone services in languages other than English—for example, a provider serving a region with large Chinese and Korean populations told us that it offered services in those languages. Providers that cannot offer services in a client’s primary language may refer the client to a provider that can. In some cases, counseling or education sessions are translated for the debtor by a friend or family member, although representatives who advocate for language access issues told us that this method is not fully effective. In addition, some providers offer written materials in Spanish but not in other foreign languages. As a result, debtors whose primary language is other than English or Spanish will receive information orally, but may not benefit from supplementary written materials.

Consumer and language access advocates, as well as representatives of bankruptcy attorneys, told us they were concerned about the ability of some non-English speakers to receive counseling and education services in their native languages in a timely and effective manner. One advocate noted that translation of these sessions may not always be effective given the technical nature of some of the financial terms used and the sensitive nature of the topics under discussion. These concerns were highlighted in a March 2006 decision in the Southern District of Florida, where a bankruptcy judge waived the prefiling credit counseling requirement for a man who said he was unable to find a provider that could offer him counseling in Creole.⁵⁰ However, although comprehensive data do not exist, most providers told us that demand for sessions in languages other than English and Spanish has been low. For example, one large nationwide provider estimated that less than one-half of 1 percent of its clients require the use of its telephone-based translation services contractor. This provider also told us it had not had any requests for in-person counseling in languages other than English or Spanish.

⁵⁰ *In re Petit-Louis*, 338 B.R. 132 (Bankr.S.D.Fla. 2006) (finding that a petitioner who was fluent in Creole was entitled to a waiver of the prefiling counseling requirement where no approved provider in the judicial district in which the petitioner resided offered counseling services in the Creole language).

When the Bankruptcy Act went into effect in October 2005, the Trustee Program's Web site did not include any information on which foreign languages individual providers offered. In April 2006, the Trustee Program modified its Web site to include foreign languages offered by providers. The Trustee Program surveyed all providers in November 2006 to gather additional information on their available languages and translation services. As of January 2007, the Web site allowed users to conduct a search to identify providers offering services in any one of 29 languages.⁵¹ A program official told us that he expected that eventually the Web site will include a function that will allow consumers to search, by provider and location, for all languages and translation services offered.

Individuals With Special Needs or Circumstances

Apart from non-English speakers, certain other populations may have experienced challenges in accessing counseling and education sessions. For example, it may be difficult for individuals with limited literacy skills to understand counseling and education sessions, which often rely heavily on written materials. In such cases, some providers told us that during the session they read aloud most of the written materials. Some consumer advocates and representatives of bankruptcy attorneys have also expressed concerns about the ability of disabled, elderly, or incarcerated debtors to easily access credit counseling and debtor education in an effective and timely manner. We could not find any data on the nature of and extent to which such difficulties exist. Most participants in the bankruptcy credit counseling process that we spoke with said that while there may be individual examples in which debtors with special needs faced challenges accessing needed services, it did not appear that this was an issue for a large number of debtors.

Debtors Without Attorneys Also Can Face Challenges

Debtors filing for bankruptcy protection may use an attorney or may file without one (pro se). The proportion of debtors filing pro se varies across different judicial districts. For example, among seven bankruptcy courts that the Administrative Office of the U.S. Courts surveyed at our request,

⁵¹ If a provider offers sessions in Spanish, this information is included in the main listing for the provider; for 29 other languages, consumers can conduct a search via a drop-down menu.

as few as 4.5 percent and as many as 24.9 percent of debtors filed pro se.⁵² At the initial meeting with a client, a bankruptcy attorney will typically tell the client about the credit counseling requirement. The attorney will often give the client contact information for approved counseling agencies and may provide a room with a telephone so that clients can fulfill the counseling requirement on the spot.

Debtors who file without the aid of an attorney can learn of the prefiling credit counseling requirement through other sources, such as instructional information located on the form of the voluntary petition that must be filed by the debtor, in other written materials provided by the bankruptcy court, or on the Web sites of the bankruptcy courts or the Trustee Program. Each of the 94 federal judicial districts has its own methods of disseminating explanatory information. When we telephoned bankruptcy courts in seven judicial districts to inquire about the process for filing for bankruptcy, staff typically directed us to the court's Web site. A review of nine courts' Web sites found that all but one highlighted the prefiling counseling requirement in a relatively prominent fashion, such as noting it on their home page. In one case, the requirement was not prominently noted, but instead was included among a long list of public notices.

The bankruptcy courts in all districts use a uniform set of Official Bankruptcy Forms that individuals must complete to file and take action in bankruptcy cases. In June 2006, at the suggestion of the Trustee Program, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States modified the main form for filing a bankruptcy petition to make the prefiling counseling requirement more clear and conspicuous. The form now requires that petitioners attach an additional exhibit—Individual Debtor's Statement of Compliance With Credit Counseling Requirement—to attest to compliance with the requirement or claim an exigent circumstance.

Debtors who file for bankruptcy without fulfilling the credit counseling requirement can face a variety of consequences. A survey conducted by

⁵² The seven bankruptcy courts surveyed by the Administrative Office of the U.S. Courts at our request were the Central District of California, the Northern District of California, the District of Colorado, the District for the District of Columbia, the Northern District of Illinois, the Northern District of Texas, and the Western District of Washington. These seven courts were chosen to represent different regions of the country. Because of the small sample size, information from these courts provides anecdotal information but cannot be projected to represent all bankruptcy courts.

the Federal Judicial Center asked U.S. bankruptcy judges what procedures they follow when a debtor has not produced a prefiling credit counseling certificate.⁵³ When asked in the survey to select one or more, 44 percent of judges said they had given such filers a specified period to produce the certificate, 34 percent had issued an Order to Show Cause or otherwise set a hearing on the deficiency, 20 percent had taken no action, and 13 percent had dismissed the case. The survey also showed that 35 percent of the judges said they treated imminent foreclosure or eviction, by itself, as an exigent circumstance, while about 55 percent treated this as an exigent circumstance only if the debtors could satisfactorily explain why they had not yet received credit counseling. Another 10 percent said that imminent foreclosure or eviction was never an exigent circumstance.

Before the Bankruptcy Act went into effect, some policymakers, consumer advocates, and others expressed concern that the credit counseling requirement could create hardship for some debtors by delaying their ability to file a bankruptcy petition and receive the automatic stay that prohibits creditors from continuing to seek payment. This stay can be very important to some debtors—for example, those facing foreclosure on their homes. However, we did not identify data on the extent to which failure to receive credit counseling has created such hardships.

Conclusions

Within a limited time frame, the Trustee Program established policies and procedures for selecting credit counseling and debtor education providers, and thus far relatively few concerns have been raised about the competence of approved providers. We found that the program's process for reviewing credit counseling applicants was generally comprehensive and included numerous steps designed to assess applicants' proficiency and reputability. The Trustee Program said it is carefully monitoring the circumstances of the IRS examinations of four approved providers and will take appropriate actions based on the outcomes of these examinations—which we agree is essential given that IRS's past examinations have often revealed abusive practices.

⁵³ Federal Judicial Center, "Implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Early Experience" (May 17, 2006). The survey was conducted by the Federal Judicial Center—the education and research agency for the U.S. Courts—in March 2006 to collect information about judges' early experiences with the credit counseling requirement. The survey was sent to 312 active and 29 former bankruptcy judges; 157 of these responded to the survey.

We also found that the value of the prefiling credit counseling requirement is not clear. The requirement was intended to provide consumers with information about bankruptcy and its alternatives so they can make informed decisions about their options. In practice, however, anecdotal evidence strongly suggests that most consumers have no realistic alternative to bankruptcy by the time they receive the counseling. As such, a wide range of stakeholders view the prefiling counseling requirement as an administrative obstacle rather than a useful exercise. It is therefore uncertain whether the requirement is achieving its key goal of helping consumers determine whether or not to file for bankruptcy. Better data on the outcomes of prefiling credit counseling would help program managers and policymakers determine its value. In particular, it would be useful to confirm whether, as many believe, nearly all consumers who receive prefiling counseling subsequently file for bankruptcy. The Trustee Program does not currently collect this information because doing so is not part of its explicit statutory responsibilities. In addition, there is currently no mechanism in place to match individual counseling certificates with bankruptcy filings. However, appropriate data on outcomes are essential to understanding program benefits and costs and to effective oversight and decision making. Data on how often counseling sessions result in bankruptcy filings or other outcomes would help determine how well the prefiling credit counseling requirement is serving its intended purpose.

There is less debate about the predischarge debtor education requirement, which provides broad-based financial education to debtors near the end of the bankruptcy process. This requirement is consistent with the increased attention being paid by Congress and executive branch agencies in recent years to improving Americans' financial literacy. As we have noted in earlier reports, we believe that ensuring that Americans have the knowledge and skills to manage their money wisely is a key element in improving the economic health of our nation in current and future generations.⁵⁴ Financial education efforts that seek to achieve goals such as reducing Americans' debt are key to helping improve our citizens' economic security and our country's economic growth.

⁵⁴ For example, see GAO, *Financial Literacy and Education Commission: Further Progress Needed to Ensure an Effective National Strategy*, GAO-07-100 (Washington, D.C.: Dec. 4, 2006) and *Highlights of a GAO Forum: The Federal Government's Role in Improving Financial Literacy*, GAO-05-93SP (Washington, D.C.: Nov. 15, 2004).

The fees charged for credit counseling and debtor education services generally appear to be reasonable. However, the extent to which fees are waived varies considerably among providers. The Trustee Program has not issued rules or formal guidance for what constitutes a debtor’s “ability to pay” because it wants to give providers flexibility to respond to market conditions. While we understand the program’s reluctance to be too prescriptive, we also believe that clearer guidance on criteria for reducing or waiving fees would have several benefits, including reducing uncertainty among providers about appropriate criteria, providing greater transparency on waiver policies, and ensuring compliance with minimum standards for waiving fees among all providers. At the same time, this guidance should give providers some flexibility, so as not to discourage those who may wish to waive fees more liberally than required.

The supply of credit counseling and debtor education providers appears to be sufficient to allow consumers to access these services in a timely manner. While in-person services are not always available in some locations, this concern is somewhat mitigated by the fact that the great majority of clients appear to prefer telephone or Internet counseling. Accessing services in languages other than English or Spanish has been a challenge for some consumers, however. The Trustee Program’s recent efforts to better communicate providers’ language and translation services represent positive actions in facilitating access by speakers of foreign languages. Further, the courts’ recent steps to better ensure that filers are aware of the pre-filing counseling requirement are beneficial given the potential consequences of filing for bankruptcy without the required counseling certificate.

Recommendations

We recommend that the Attorney General direct the Director of the Executive Office for U.S. Trustees to do the following:

- To help assess the merit of the Bankruptcy Act’s pre-filing counseling requirement, the Trustee Program should develop a mechanism that would allow the program or other parties to track the outcomes of pre-filing credit counseling, including the number of individuals issued counseling certificates who then file for bankruptcy. This may involve working in conjunction with the Administrative Office of the U.S. Courts to ensure that the unique certificate numbers issued by the Trustee Program can be linked to bankruptcy petitions filed with the courts.
- To clarify the Bankruptcy Act’s requirement that pre-filing credit counseling and pre-discharge debtor education be provided regardless of a

client's ability to pay, the Trustee Program should issue formal guidance on what constitutes "ability to pay." In developing this guidance, the program should examine the reasons behind the significant variation among providers in waiving fees. In addition, while this guidance should set a minimum benchmark for when fees should be reduced or waived, it should be designed so as not to limit or discourage providers who may wish to waive fees for more clients than qualify under the minimum benchmark.

Agency Comments

We provided a draft of this report to the Administrative Office of the U.S. Courts, Department of Justice, and IRS for comment. These agencies provided technical comments that we incorporated as appropriate. In addition, on behalf of the Department of Justice, the Executive Office for United States Trustees provided a written response, which is reprinted in appendix III.

In its comment letter, the Trustee Program said that it concurred with our recommendation to develop a mechanism that would allow the program or other parties to track the outcomes of pre-filing credit counseling. The program noted that it already collects certain outcome data from providers through mechanisms such as its reapplication process and quality service reviews. It said it plans to refine and expand its current tracking and data collection methods and explore the feasibility of developing more comprehensive outcome measures. The Trustee Program also concurred with our recommendation related to issuing formal guidance on what constitutes ability to pay. The program said that it will promulgate formal fee waiver guidance in a rulemaking later this year and will study the fee waiver variations among approved providers.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. We will then send copies of this report to the Director of the Administrative Office of the U.S. Courts, the Attorney General, the Commissioner of Internal Revenue, and interested congressional committees. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have any questions concerning this report, please contact me at (202) 512-8678 or jonesy@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the

last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

A handwritten signature in black ink that reads "Yvonne D. Jones". The signature is written in a cursive, flowing style.

Yvonne D. Jones
Director, Financial Markets and
Community Investment

List of Requesters

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
House of Representatives

The Honorable Richard J. Durbin
The Honorable Russell D. Feingold
The Honorable Edward M. Kennedy
United States Senate

The Honorable Howard L. Berman
The Honorable William D. Delahunt
The Honorable Chris Van Hollen
The Honorable Sheila Jackson Lee
The Honorable Zoe Lofgren
The Honorable Jerrold Nadler
The Honorable Robert C. Scott
The Honorable Debbie Wasserman Schultz
The Honorable Melvin L. Watt
House of Representatives

Appendix I: Scope and Methodology

Our report objectives were to examine (1) the actions taken by the Trustee Program to approve credit counseling and debtor education providers; (2) the content and results of the counseling and education sessions; (3) the fees providers charge for counseling and education services, and the extent to which these services are provided regardless of debtors' ability to pay; and (4) the availability of approved counseling and education services, and the challenges debtors may face in receiving these services.

To address all of the objectives, we reviewed the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act) related to credit counseling and debtor education and examined its legislative history. We also reviewed the July 2006 interim final rule on application procedures and criteria for approval of credit counseling and debtor education agencies, and we obtained and reviewed the public comments on this rule received by the Department of Justice's Trustee Program. We also interviewed representatives of, and obtained relevant documentation from, the Trustee Program's Credit Counseling and Debtor Education Unit, as well as the Federal Trade Commission, Internal Revenue Service (IRS), Administrative Office of the United States Courts, and the National Association of Attorneys General, including representatives from four states. In addition, we interviewed and collected documents from the American Bankruptcy Institute; National Association of Consumer Bankruptcy Attorneys; National Association of Bankruptcy Trustees; National Association of Chapter 13 Trustees; creditor organizations, such as the American Bankers Association and the Financial Services Roundtable; academic researchers; and consumer organizations, such as the Consumer Federation of America and the National Consumer Law Center. We also reviewed and analyzed data from the Trustee Program on complaints received related to credit counseling and debtor education providers, and the resolution of these complaints.

Further, we conducted comprehensive interviews with representatives of 10 providers of credit counseling or debtor education that had been approved by the Trustee Program. Seven of these providers had been approved to offer both of these services, while one offered only credit counseling and two offered only debtor education. These providers were selected because they included the three largest providers of each service and represented a range of different sizes, modes of delivery (in-person, telephone, and Internet), geographic locations, trade association affiliations, types of organizations, and years of experience. These 10 providers represented 62 percent and 53 percent of all pre-filing credit counseling and pre-discharge debtor education certificates, respectively,

that were issued from January 9, 2006, through October 17, 2006. We obtained from nearly all of them materials used to facilitate sessions, such as counselor training manuals, curricula, disclosures, workbooks, and handouts. In addition, we interviewed representatives of two trade organizations representing credit counseling agencies, the National Foundation for Credit Counseling, and the Association of Independent Consumer Credit Counseling Agencies.

To address all of the objectives, we also reviewed a nonprobability sample of the Trustee Program's case files for 32 provider applications that were approved and 11 applications that were rejected. Among the approved applications we reviewed, 15 were for credit counseling and 17 were for debtor education; as of October 2006, the Trustee Program had approved 153 credit counseling providers and 268 debtor education providers. Among the rejected applications we reviewed, 6 were for credit counseling and 5 were for debtor education; as of October 2006, the Trustee Program had rejected 96 applications. We did not do a probability sample because of the limited size of the sample we could review and because we wanted to ensure that the small sample included all of the largest providers and specific numbers of other types of providers. The criteria we used to select the provider application files included (1) size of the provider, as measured by number of clients served 12 months prior to applying for Trustee Program approval, (2) delivery mode (in-person, telephone, and Internet), (3) type of organization (such as nonprofit agency, educational institution, or Chapter 13 panel trustee), (4) length of time in business, (5) trade association affiliation, and (6) geographic location. The providers represented in our file review had issued 77 and 67 percent, respectively, of all credit counseling and debtor education certificates issued from January 9 through October 17, 2006.

The case files we reviewed included, among other things, agencies' initial applications, protocols, curricula and other guidance used by counselors and instructors, written materials and disclosures provided to consumers, fee schedules, and correspondence between the provider and the Trustee Program. To facilitate the case file review, we developed a data collection instrument to record specific information for each case file reviewed. To protect the confidentiality of agencies whose applications were approved or rejected, we did not record in our notes or include in our workpapers any identifying information from these file reviews (such as agencies' and individuals' names). Instead, we used unique numeric codes to track, for the purposes of our analysis, the information associated with individual applicants. We conducted our review on site at the offices of the Executive Office for U.S. Trustees.

To address the first objective, in addition to the steps described above, we reviewed and analyzed the Trustee Program's written policies, rules, guidance, and procedures for approving credit counseling and debtor education providers, including the initial and revised applications and instructions. To determine whether IRS had revoked the section 501(c)(3) tax-exempt status under the Internal Revenue Code, or taken other enforcement actions against providers, we met with IRS officials and reviewed their publicly available information. To determine if providers had been subject to other enforcement actions, we met with representatives of the Federal Trade Commission and selected state investigative agencies. We also met with the Council of Better Business Bureaus and obtained Better Business Bureau reports for a selection of offices of the three largest providers.

To address the second objective, we reviewed and analyzed the materials used by our sample of providers to facilitate in-person, telephone, and Internet counseling and debtor education. For context, we observed a credit counseling session conducted in person (for which the provider obtained the client's consent) and listened to a recording of a counseling session conducted by telephone (which did not allow identification of the client). We also observed two debtor education sessions conducted by telephone—one live and one recorded—which did not include the clients' identities. We also participated, with the provider's consent, in three mock credit counseling sessions conducted via the Internet.

To address the third objective, we reviewed guidance provided by the Trustee Program on its Web site related to fees and fee waivers. We reviewed and analyzed data maintained by the Trustee Program related to providers' fees, but we determined that these data were not reliable. As a result, to learn providers' fees and waiver policies, we relied largely on testimonial evidence from 10 providers we interviewed. In some cases, we also reviewed fee information supplied by providers on their Web sites. We also reviewed a study by the National Foundation for Credit Counseling that included information on its members' fees for prefiling counseling and debtor education sessions.

To address the fourth objective, we reviewed available data from the Trustee Program on the number and characteristics of providers and analyzed the number and geographic distribution of providers. We also reviewed the Trustee Program's Web site, which serves as its primary mechanism for supplying information on which providers have been approved by the program. We also reviewed a survey of bankruptcy judges that was conducted by the Federal Judicial Center in March 2006. Further,

at our request, the Administrative Office of the U.S. Courts gathered information from the bankruptcy courts in seven judicial districts related to how the court handles debtors who fail to submit prefiling credit counseling certificates with their bankruptcy petitions. To better understand the experience of pro se debtors, we also telephoned bankruptcy courts in seven judicial districts to inquire about the steps needed for a bankruptcy filing and reviewed the information and instructions on Web sites of nine bankruptcy courts. We also reviewed relevant portions of the Federal Rules of Bankruptcy Procedure, including the standardized forms, attachments, and supporting instructions required by the courts to file a bankruptcy petition. In addition, we reviewed certain decisions issued by bankruptcy court judges regarding the failures of bankruptcy filers to fulfill the credit counseling requirement. To gather additional information on issues related to language, we met with a representative of an organization that advocates for improved language access and analyzed the Trustee Program Web site for the ease with which consumers can identify providers offering services in foreign languages.

To understand the implementation of the credit counseling and debtor education provisions in the six judicial districts in Alabama and North Carolina, we interviewed staff at the Administrative Office of the U.S. Courts and two bankruptcy administrators, one in Alabama and one in North Carolina. We also reviewed provider applications promulgated by the judicial districts in these two states, as well as the lists maintained by the six judicial districts of providers that have been approved. As part of our case file review, we also reviewed materials from some credit counseling and debtor education providers that had been approved in one or more of these six districts.

We conducted our review from February 2006 through March 2007 in accordance with generally accepted government auditing standards.

Appendix II: Implementation of Counseling and Education Provisions in Alabama and North Carolina

As a result of legislation passed by Congress in 1986, the administration of bankruptcy cases in Alabama and North Carolina is overseen by bankruptcy administrators rather than the Trustee Program. In the six judicial districts in these states, a bankruptcy administrator, under the Administrative Office of the U.S. Courts, is responsible for supervising the administration of bankruptcy cases, including maintaining panels of private bankruptcy trustees who liquidate debtors' assets and monitor repayment plans. These administrators are also responsible for implementing the Bankruptcy Act's credit counseling and debtor education provisions. To gather information on this implementation in these two states, we spoke with two bankruptcy administrators, one in Alabama and one in North Carolina, and an official of the Administrative Office of the U.S. Courts.

Bankruptcy administrators in Alabama and North Carolina told us they have largely mirrored the requirements, guidance, and practices established by the Trustee Program for approving credit counseling and debtor education providers. They use a slightly modified version of the Trustee Program's instructions and application forms, and follow a similar process for reviewing applications. Unlike the Trustee Program, the bankruptcy administrators do not require applicants and providers to submit a written waiver authorizing access to confidential information about the agency from IRS, although the administrators are currently considering such a measure.

The six judicial districts in Alabama and North Carolina had approved between 9 and 14 credit counseling providers and between 10 and 14 debtor education providers, according to information given on these districts' Web sites as of January 2007.¹ Many of these providers had also been approved by the Trustee Program to offer services in other judicial districts, but a few were small, local organizations that were approved only in one district. None of the providers approved in these two states had had its tax-exempt status revoked by IRS. However, an IRS official confirmed that IRS is examining the tax-exempt status of two credit counseling agencies approved by bankruptcy administrators in Alabama and North Carolina. The Administrative Office of the U.S. Courts told us if a provider's tax-exempt status were to be revoked, that provider's

¹ The districts' Web sites varied with respect to how often they updated their lists of approved providers. Therefore, the specific date for which these numbers apply ranges, depending on the district, from October 26, 2006 to January 24, 2007.

approval to provide pre-filing credit counseling could be reexamined. In addition, a Trustee Program official told us that one provider approved in Alabama or North Carolina had applied but been denied approval by the Trustee Program because, among other things, its counseling was not found to be adequate and its board of directors was not found to be sufficiently independent.

In general, the course content and mode of delivery for credit counseling and debtor education providers in Alabama and North Carolina were similar to those in other judicial districts. We found only two notable differences. First, the Trustee Program requires that approved Internet-based credit counseling sessions include a separate component in which the client has individual communication with a counselor, such as a telephone conversation or Web-based chat. However, administrators in Alabama and North Carolina told us their approved credit counseling sessions may be conducted entirely via the Internet without any direct interaction between the debtor and a counselor. Second, the fees charged by providers for credit counseling and debtor education sessions were typically \$25 to \$40, according to the administrators, as compared with an average of roughly \$50 in the rest of the nation.

Appendix III: Comments from the Department of Justice



U.S. Department of Justice

Executive Office for United States Trusteess

Office of the Director

Washington, D.C. 20530

March 8, 2007

Ms. Yvonne Jones
Director, Financial Markets and
Community Investment
Government Accountability Office
Washington, DC 20510-1501

RE: GAO-07-203 Report

Dear Director Jones:

Thank you for the opportunity to review the Government Accountability Office's draft report on implementation of the credit counseling and debtor education provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The draft report provides a comprehensive review of the major aspects of implementation of these provisions by the United States Trustee Program (USTP or Program), and concludes that we have successfully fulfilled our statutory mandates. GAO makes two recommendations for future action which we endorse. We would also like to take this opportunity to provide comments on several key findings and conclusions made in the draft report, as well as our initial plans to implement the GAO's recommendations.

Key Findings and Conclusions

1. The GAO concluded that the USTP developed and implemented a comprehensive, effective, and timely process for the approval of eligible credit counselors and debtor educators. GAO gives credit to the Program for establishing the approval process under the demanding deadlines set forth in the statute, and further notes that we have established an effective process to investigate complaints and obtain corrective actions where appropriate. GAO also points out that the Program is providing for the enhanced oversight of agencies through the on-site, post-approval review of provider operations. Importantly, GAO found few issues relating to the competence, integrity, or performance of providers approved by the Program. This is particularly noteworthy since the credit counseling industry had been the subject of both enforcement actions by Federal agencies and criticism by the Congress.

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Now on p. 13.

We suggest that two issues covered in the draft report merit further explanation. First, on page 10 of the report, GAO provides data relating to the number of approved and rejected applications. So that the numbers have some context, it may be useful to note that the 96 applications rejected and the 123 applications withdrawn after USTP review were out of 680 original applications. This translates to 64 percent approved and 32 percent either rejected or withdrawn (with 4 percent still in process).

Now on pp. 18-19.

Second, on page 15, GAO notes that the interim final rule allows the Program to immediately remove a credit counseling agency if that agency's tax-exempt status is revoked by the IRS. It is important to clarify that decisions to remove agencies are first made based upon the BAPCPA eligibility criteria, and agencies determined to no longer meet eligibility standards normally are entitled to exhaust a 45-day administrative review process before removal. The interim rule provides that agencies whose tax-exempt status is revoked by the IRS may be removed immediately. The immediate removal is a consumer protection provision which permits the Program to address cases where the IRS' revocation is based on conduct that may compromise the integrity of the credit counseling services.

2. The GAO found that credit counseling and debtor education services are available to debtors in a reasonable time frame. Although the capacity of providers is a matter requiring continual USTP monitoring, providers maintain they will be able to expand their capacity if necessary to meet an increase in demand. The GAO also found that services are generally available to debtors with limited English proficiency, and that the USTP has taken appropriate steps to facilitate a debtor's search for an agency which can provide the services in the debtor's native language. Moreover, GAO confirmed that most debtors prefer telephone counseling and that there is limited reliable research on the effectiveness of the various modes of delivery of counseling and education.

It is important to note that the Program contracted with the Rand Corporation to review the comparative effectiveness of telephonic, Internet, and in person modes of delivery. The Rand report is expected to be issued in the first half of calendar year 2007.

3. The GAO found that fees charged by providers are reasonable and that fees are waived for debtors with an inability to pay. The draft report further documents efforts by the Program to require disclosure by providers of their fee waiver policies and corrective actions required of providers who do not have adequate fee schedules or waiver policies. The GAO suggests that the Program formalize its guidance on fee waivers in its next rule-making procedure and further suggests that such guidance provide flexibility so that providers may adopt more generous criteria.

As discussed below, the Program endorses this recommendation. With more than one year of experience implementing the credit counseling and debtor education provisions of the law, we are now in a much better position to promulgate a standard with regard to credit counseling and debtor education fee waivers. The task of devising a sufficiently flexible standard that ensures debtors who are unable to pay are not required to pay is quite difficult, but

important to accomplish. The courts have faced a similar challenge with regard to filing fee waiver determinations under 28 U.S.C. § 1930(f), and anecdotal evidence suggests that judicial determinations vary widely by district.

4. The GAO notes that there is limited reliable data on the outcomes of credit counseling sessions. It also notes that the BAPCPA does not mandate the collection or evaluation of such data. While we agree with the GAO recommendation that the USTP develop a mechanism so that we and others can track outcomes, we believe the report does not provide a complete explanation of efforts made to date to accomplish this goal.

The Program developed a certificate issuance system to provide greater security and assurance that filed certificates are genuine. This also allowed us to determine that from May 31, 2006, to October 27, 2006, 373,615 credit counseling certificates were issued. During this same time period, factoring out cases filed by non-individuals (e.g., corporations) and joint filings (i.e., one case filed, but a separate certificate filed by each spouse), we determined that at least 10 percent of those who were issued certificates decided not to file bankruptcy after receiving credit counseling. The primary limitation to this estimate is that individuals may file bankruptcy after a substantial gap in time.

Tracking the outcome of credit counseling has been a focus of many of the activities of the Program (e.g., data collection as part of the re-application process and analysis conducted as part of the Program's quality service reviews of providers) during the first year of the BAPCPA. Going forward, this information, combined with enhanced automation and time series data that will be available with the passage of time, will provide the Program with more reliable information on the outcome of credit counseling.

Recommendations

GAO makes two recommendations for further action by the USTP. The Program concurs in the recommendations and responds as follows.

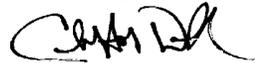
1. The GAO recommends that the Program "develop a mechanism that would allow the Program or other parties to track outcomes of pre-filing credit counseling, including the number of individuals issued counseling certificates who then file for bankruptcy." The USTP will develop such a mechanism by refining and expanding our current methods. In addition, we will explore the feasibility of developing more comprehensive outcome measures.

2. The GAO recommends that the Program "issue formal guidance on what constitutes 'ability to pay' . . . [and] examine the reasons behind the significant variation among providers in waiving fees." The USTP will promulgate formal fee waiver guidance in a rule-making later this year and will study the fee waiver variations among approved providers.

**Appendix III: Comments from the Department
of Justice**

We greatly appreciate the GAO's constructive review of the Program's implementation of the new legal requirements for credit counseling and debtor education. The close interaction of the GAO and USTP staff was entirely professional, GAO was sensitive to resource demands, and the final report will be of enormous utility to us as we seek to enhance our capability to fulfill our statutory mission in this important new area of responsibility.

Sincerely yours,



Clifford J. White III
Director

cc: Honorable William W. Mercer
Acting Associate Attorney General

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Yvonne D. Jones, (202) 512-8678 or jonesy@gao.gov

Staff Acknowledgments

In addition to the contact named above, Jason Bromberg, Assistant Director; Gwenetta Blackwell-Greer; Anne A. Cangi; Emily R. Chalmers; Alexandra K. Dew; Melissa J. Jaynes; Carl M. Ramirez; and Omyra Ramsingh made key contributions to this report.

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